

PAUL CHURCHILL (CAL BAR NO. 124151)  
ROBERT B. BADER (CAL BAR NO. 233165)  
GOODWIN PROCTER LLP  
101 California Street, Suite 1850  
San Francisco, CA 94111  
Tel: 415-733-6000  
Fax: 415-677-9041  
rbader@goodwinprocter.com

Attorneys For Plaintiff  
MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

KEKER & VAN NEST, LLP  
SUSAN J. HARRIMAN (CAL BAR NO. 111703)  
710 Sansome Street  
San Francisco, CA 94111-1704  
Tel: 415-391-5400  
Fax: 415-397-7188  
sharriman@kvn.com

Attorneys for Defendant  
FOURTH QUARTER PROPERTIES  
XLVIII, LLC

[additional counsel listed on signature pages]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MENLO EQUITIES DEVELOPMENT  
SERVICES COMPANY LLC

Plaintiff,

vs.

FOURTH QUARTER PROPERTIES XLVIII,  
LLC

Defendant.

No.: C 07-00089 JW

**JOINT STIPULATION REGARDING  
BRIEFING AND HEARING SCHEDULE  
AND [PROPOSED] ORDER**

Dept.: 8  
Judge: Hon. James Ware

Date Complaint Filed: December 12, 2006

**JOINT STIPULATION REGARDING BRIEFING AND HEARING SCHEDULE**

This Joint Stipulation Regarding Briefing and Hearing Schedule is entered into between Plaintiff Menlo Equities Development Services Company LLC (“MEDSCO”), and Defendant Fourth Quarter Properties XLVIII, LLC (“Fourth Quarter”), by and through their counsel of record, with reference to the following facts:

1. On December 12, 2006, MEDSCO filed a Complaint against Fourth Quarter in the Superior Court of California, County of Santa Clara.

2. On December 21, 2006, MEDSCO filed an Application for Right to Attach Order and Order for Issuance of Writ of Attachment (“Writ Application”) against Fourth Quarter to attach certain property located in Sunnyvale, CA that is owned by Fourth Quarter (the “Property”). MEDSCO’s Writ Application was set for hearing in the Superior Court on January 30, 2007.

3. MEDSCO also planned to have the Superior Court hear an *Ex Parte* Application for a Temporary Protective Order on January 8, 2007, to preserve the status quo pending the Superior Court’s ruling on the Writ Application.

4. On January 5, 2007, Fourth Quarter removed the case from the Superior Court to this Court. Dkt. # 1.

5. On January 12, 2007, Fourth Quarter filed a motion to dismiss MEDSCO’s Complaint. Dkt. # 5. The hearing on Fourth Quarter’s motion currently is set for March 5, 2007, at 9:00 a.m.

6. On January 19, 2007, MEDSCO filed an Application for Right to Attach Order, Temporary Protective Order, and Order for Issuance of Writ of Attachment and set the matter for hearing on February 26, 2007. The closing on the sale of the Property is scheduled for March 2, 2007.

7. The parties have agreed to hold a mediation with Judge Fern Smith (Ret.) of JAMS on February 22, 2007, in an effort to resolve the case.

8. Because the closing date for the sale of the Property is scheduled for March 2, 2007, and MEDSCO’s counsel, Anthony Feeherly will travel from Boston, MA to attend the hearings on Fourth Quarter’s motion and MEDSCO’s application, the parties believe that it is most efficient for the Court to hear concurrently MEDSCO’s application and Fourth Quarter’s motion to dismiss

before March 2. Accordingly, the parties propose that the hearing on Fourth Quarter's motion be rescheduled for February 26, 2007, at 9:00 a.m.

9. The parties propose the following briefing schedule:

2/5/07 MEDSCO's Opposition and any Other Responsive Pleading to Fourth Quarter's Motion to Dismiss Due

2/5/07 Fourth Quarter's Opposition and any Other Responsive Pleading to MEDSCO's Writ Application/Application for Temporary Protective Order Due

2/12/07 Fourth Quarter's Reply to MEDSCO's Opposition to Motion to Dismiss Due

2/12/07 MEDSCO's Reply to Fourth Quarter's Opposition to Writ Application/Application for Temporary Protective Order Due

10. The parties agree that any request Fourth Quarter may make for MEDSCO to increase the amount of the undertaking can be heard at the February 26, 2007, hearing.

IT IS THEREFORE STIPULATED that, subject to the approval of the Court, the hearing on Fourth Quarter's motion to dismiss currently calendared for March 5, 2007, should be moved to February 26, 2007, and heard concurrently with MEDSCO's Application for Right to Attach Order, Temporary Protective Order, and Order for Issuance of Writ of Attachment, and that the parties' proposed briefing schedule should be adopted.

Dated: January 24, 2007.

GOODWIN PROCTER LLP  
PAUL CHURCHILL  
ROBERT B. BADER  
101 California Street, Suite 1850  
San Francisco, CA 94111  
Tel: 415-733-6000  
Fax: 415-677-9041

Of Counsel:  
ANTHONY M. FEEHERRY  
LAURA M. STOCK  
Exchange Place  
Boston, MA 02109-2881  
Tel: 617-570-1000  
Fax: 617-523-1231  
afeeherry@goodwinprocter.com

By /s/ Robert B. Bader

Attorneys for Plaintiff  
MENLO EQUITIES DEVELOPMENT SERVICES  
COMPANY LLC

**DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B**

I, Robert B. Bader, hereby declare pursuant to general Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the other signatory listed below.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on January 24, 2007 at San Francisco, CA.

KEKER & VAN NEST, LLP  
SUSAN J. HARRIAMN  
710 Sansome Street  
San Francisco, CA 94111-1704  
Tel: 415-391-5400  
Fax: 415-397-7188

CUSHING, MORRIS, ARMBRUSTER  
& MONTGOMERY, LLP  
KIRK M. McALPIN, JR.  
229 Peachtree Street, NE, Suite 2110  
Atlanta, GA 30303  
Tel: 404-614-8117  
Fax: 404-522-0607  
kmm@cmamlaw.com

By [concurrence obtained, General Order 45, § X.B]  
Susan J. Harriman

**[PROPOSED] ORDER**

For good cause shown in the Joint Stipulation Regarding Briefing and Hearing Schedule, PURSUANT TO STIPULATION, IT IS SO ORDERED that the hearing on Fourth Quarter's motion to dismiss currently calendared for March 5, 2007, be moved to February 26, 2007, and heard concurrently with MEDSCO's Application for Right to Attach Order, Temporary Protective Order, and Order for Issuance of Writ of Attachment, and that the parties' proposed briefing schedule is adopted.

Dated: January 25 2007

  
HON. JAMES WARE